

REPORT OF THE TOWN COUNSEL (F/Y 2006)

In matters in litigation, there were no matters pending in Federal Court at the end of the year, except for a bankruptcy matter in which the Town was positioned as a creditor and in which a dividend was received. In the Appeals Court, two matters were managed during the year, one of which resulted in the court upholding a decision of the Zoning Board of Appeals that an educational facility proposed at Abbott Road was not subject to site plan review. The second zoning case, in the nature of an appeal of the decisions of the Zoning Enforcement Officer and the Zoning Board of Appeals, was remanded to the Land Court where, after further hearings, cross motions for summary judgment were filed in an effort to bring this long standing matter to a conclusion. Two other matters were pending in the Land Court, both concerning efforts by local residents to finalize their title claims to paper streets.

Several matters were managed in the District Court, including three complaints against the Town seeking damages for claimed breaches of contract, two of which were successfully resolved and the third of which resulted in a judgment for the plaintiff, but in an amount less than that being claimed. An appeal of the decision of the Chief of Police to deny a gun permit was upheld. Several personal injury and property damage claims were received. The only state administrative forum engaged in during the year was before the Appellate Tax Board, in which several residents' appeals were dismissed, some settled, and others litigated to conclusion.

Considerable attention was given to a wide menu of issues. The appropriate Town boards were given assistance in their reviews of private developments, including Linden Square, the Wellesley Inn and the Wellesley Country Club projects. Still another effort was made by the Board of Selectmen to reinvigorate discussion over the site at 27 Washington Street, to no success. Environmental matters requiring attention during the year included the Town's status concerning the Morses Pond EPA/DEP; the Sprague Fields study was monitored; and several wetlands encroachment matters brought to the Town's attention by the Wetlands Protection Committee were received. Two separate land exchanges, both involving an exchange of private land for park land, were attended to and special legislation drafted for the required authority to execute them. An order of condemnation by the Health Department was monitored, both administratively and in Superior Court. An opinion was rendered that the reconstruction of the Morses Pond dock does not qualify as renovation as that term is used in the Massachusetts Community Preservation Act.

Assistance was given in the area of public works and utilities, including on a question of the legality of providing water service to a Needham site, and a pipe failure at one of the larger private properties in Town. The Board of Public Works' policy on volunteerism at the Take it or Leave It section of the RDF was reviewed. An opinion was rendered that the MLP Board does not have unilateral authority to raze Town buildings and replace them with new ones.

In matters in education, the Middle School Renovation Project was reviewed and assistance given to the Permanent Building Committee in its claim on behalf of the Town to recover insurance proceeds on account of the water damage sustained to the gym floor. The legal issues concerning classroom modulars were reviewed, as was the potential liability and other legal aspects of the climbing wall being proposed for the high school. Several questions concerning possible Town residency for purposes of attending school were reviewed. Assistance was given in analyzing several special education matters, but no

formal administrative assistance was required. Two disciplinary hearings at the high school were attended, both of which resulted in appeals before the Superintendent of Schools.

Assistance was rendered to the Board of Selectmen in its search for an Executive Director, and the required attendant special legislation was drafted, to implement the Board's decision to separate the functions of the Executive Director and the Finance Director. Assistance was given the Retirement Board on several issues, including on an administrative head's forced involuntary disability, which was ultimately resolved successfully on receipt of medical authorization allowing the employee to return to work. Assistance was given to the Library Trustees on several issues, including application of the law on gifts and whether a non-profit corporation's use of a portion of a branch library building would be legal. Assistance was given to the Board of Selectmen and the Cable Access Board in the furtherance of the latter's designation to receive contractual amounts due the Town and to assume the operational responsibility over studio operations.

Further to the Board of Selectmen's policy to support additional affordable housing, attention was given to several affordable housing developments, including the Town-owned Boulevard Road site; Wellesley Manor Estates; the further development of the Walnut Street Fire Station; and the Ardmore Apartment complex on Walnut Street, where the site's owners may seek to convert the existing rental development into condominiums. Assistance was rendered to the task force appointed by the Board of Selectmen to recommend a policy on that issue.

In addition to the foregoing, assistance was given in the Board of Selectmen's several initiatives to develop policies concerning winter holiday season displays; political signage and other advocacy within 150 feet of a polling place; and gifts proffered to the Town, and how, if at all, to accept them. Several questions arose again this year on the impermissibility of using municipal funds or other resources to advocate a favorable result on a referendum question.

As before, several requests were received for opinions on the Conflict of Interest Law, the Uniform Procurement Law, the Open Meeting Law and the Public Records Law. Records subpoenas were attended to. Several of the Town's enforcement officers were assisted in their duties, particularly zoning enforcement. All sessions of the Annual Town Meeting and Special Town Meetings were prepared for and attended, as were all sessions of the Board of Selectmen's weekly meetings.

The Town continues to be ably represented especially by Morgan, Brown & Joy, the Town's labor counsel, and by the following special counsel: Goodwin, Proctor, special counsel on the EPA cleanup at Morses Pond; Peter J. Epstein, Esq., special counsel for cable television and communication issues; and Robert J. Gad, Esq., special counsel on certain zoning and regulatory aspects of the proposed private development at 27 Washington Street.

More detailed reports are contained in the monthly reports of the town counsel, which remain available for public inspection.

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